

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

TRAXXAS, LP	§	
	§	CIVIL ACTION NO.
Plaintiff,	§	
v.	§	
	§	
SHANTOU CHENGHAI WEILI TOYS	§	
INDUSTRIAL CO., LTD.	§	
	§	A JURY IS DEMANDED
Defendant.	§	

PLAINTIFF'S ORIGINAL COMPLAINT FOR DESIGN PATENT INFRINGEMENT

Plaintiff Traxxas LP, for its Original Complaint for Design Patent Infringement against Defendant Shantou Chenghai Weili Toys Industrial Co., Ltd. states and alleges as follows:

I. PARTIES

1. Plaintiff Traxxas is a corporation organized and existing under the laws of the State of Texas having its principal place of business at 6250 Traxxas Way, McKinney, TX 75070, and doing business in this judicial district.

2. On information and belief, Shantou Chenghai Weili Toys Industrial Co., Ltd. ("WL Toys") is a corporation organized and existing under the laws of Guangdong Province, Mainland China. On information and belief, WL Toys purposefully used one or more intermediators to sell one or more of the accused products in the Eastern District of Texas through the stream of commerce and purposefully directed its activities at Texas residents and the residents of this Judicial District by placing the accused products into established distribution channels with expectation that they would be sold throughout the United States, including Texas and this Judicial District. WL Toys therefore is subject to personal jurisdiction in the State of Texas in this Judicial District. WL Toys may be served with process through the Hague

Convention on the Service of Board or Judicial and Extra-Judicial Documents by presenting the documents to be served to the Chinese Central Authority, who then will transmit the documents to local authorities, who then will serve WL Toys by serving its authorized representative, Mr. Zebulon Xu, at Fengxin Industrial Park, Chenghai District, Shantou City, Guangdong Province, Mainland China 515800.

II. JURISDICTION AND VENUE

3. This action is for design patent infringement arising under the Patent Laws of the United States, Title 35, United States Code, § 271 et seq.

4. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over WL Toys because WL Toys has purposefully used intermediators to sell one or more of the accused products in the Eastern District of Texas through the stream of commerce and purposefully directed its activities at Texas residents and the residents of this Judicial District by placing the accused product into established distribution channels with expectation that they would be sold throughout the United States, including Texas and this Judicial District.

6. Defendant WL Toys is a foreign corporation not resident in any district in the United States. Accordingly, venue is proper in this Court under 28 U.S.C. § 1391(c)(3).

III. BACKGROUND FACTS

7. Traxxas LP is the owner and assignee of U.S. Design Patent No. D710,453 entitled "Quadrotor Model Helicopter Airframe," ("the '453 Patent") duly issued on August 5, 2014 by the United States Patent and Trademark Office, a copy of which is attached hereto as Pleading Exhibit 1.

8. WL Toys sells Quadrotor Model Helicopter Airframes that infringe upon the '453 Design Patent under the ordinary observer test. Under this test, an accused design infringes upon a patented design if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same in that the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other. The comparative analysis between the accused design and the patented design is made in light of the prior art.

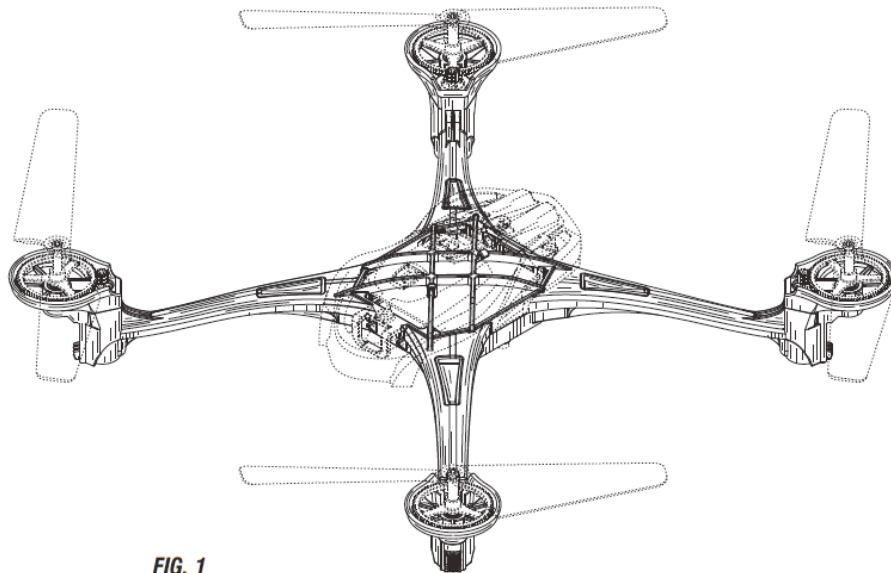


FIG. 1

Perspective View of U.S. Patent D710,453

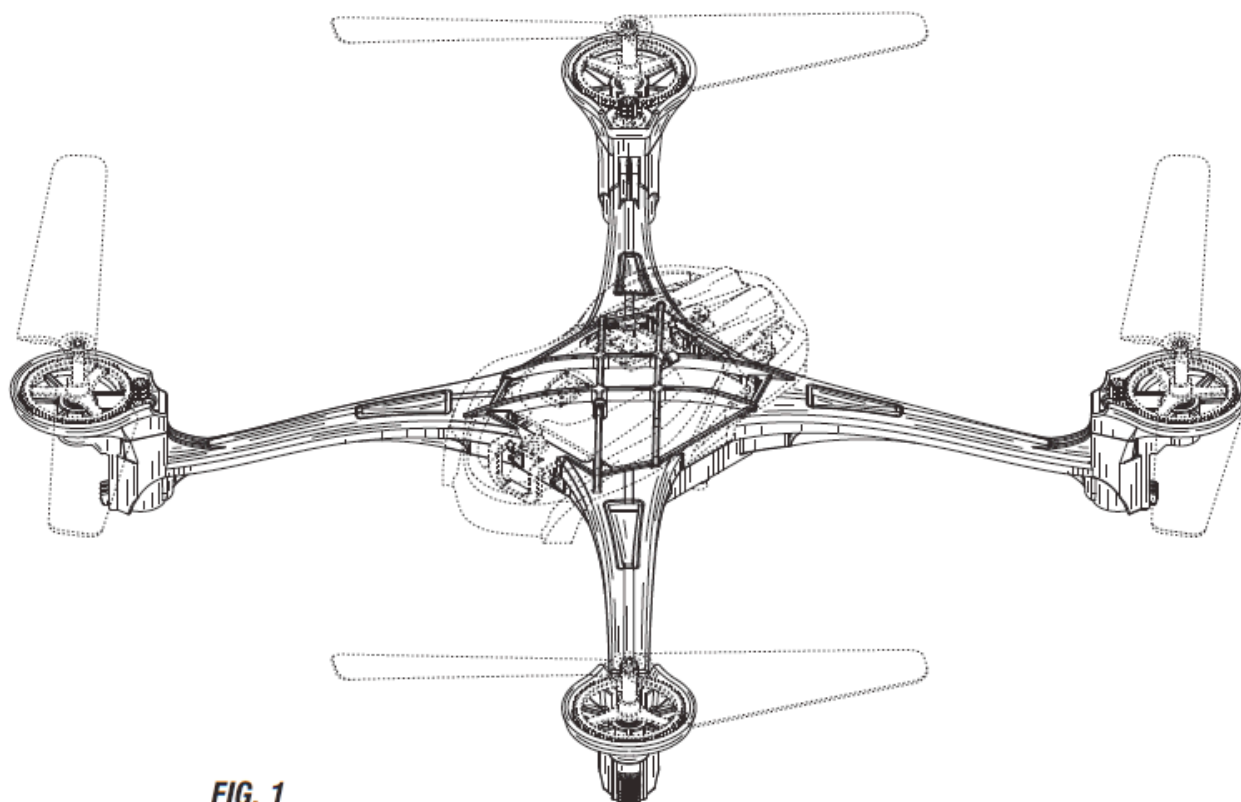


WL Toys V636 Airframe Accused Product

9. The Traxxas '453 patented design is directed to a Quadrotor Model Helicopter Airframe. One perspective view and six orthogonal views of the subject '453 patented design are as follows:

U.S. Design Patent No. D710,453
Quadrotor Model Helicopter Airframe

Top, Right, Front Perspective View



Top Plan View

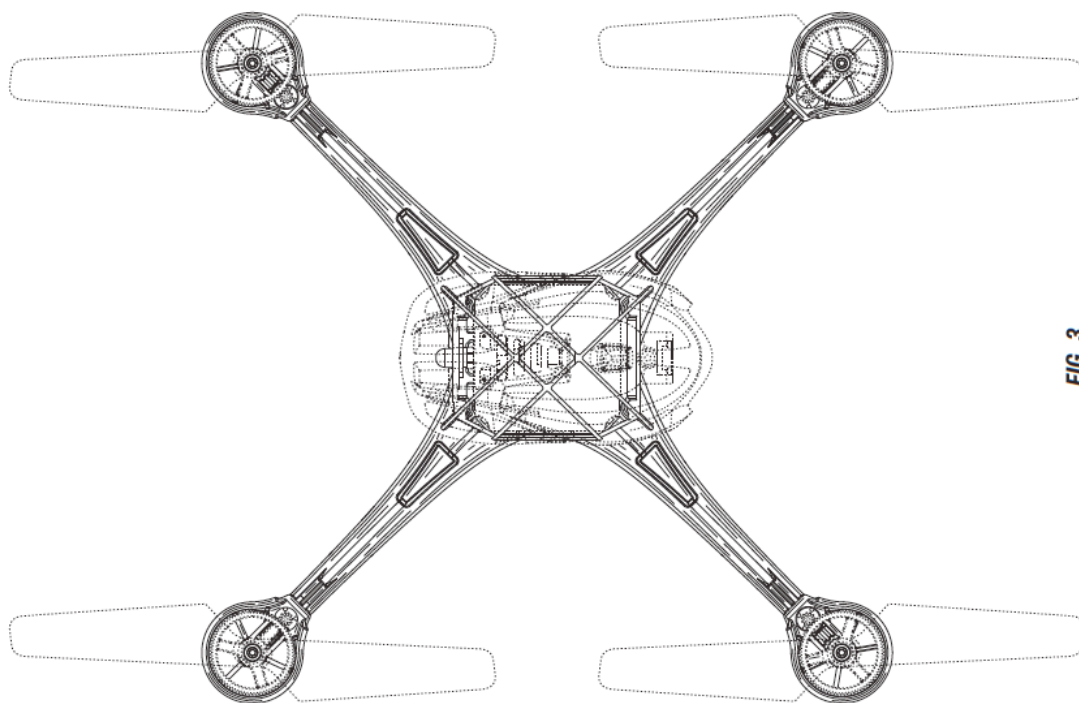


FIG. 3

Bottom Plan View

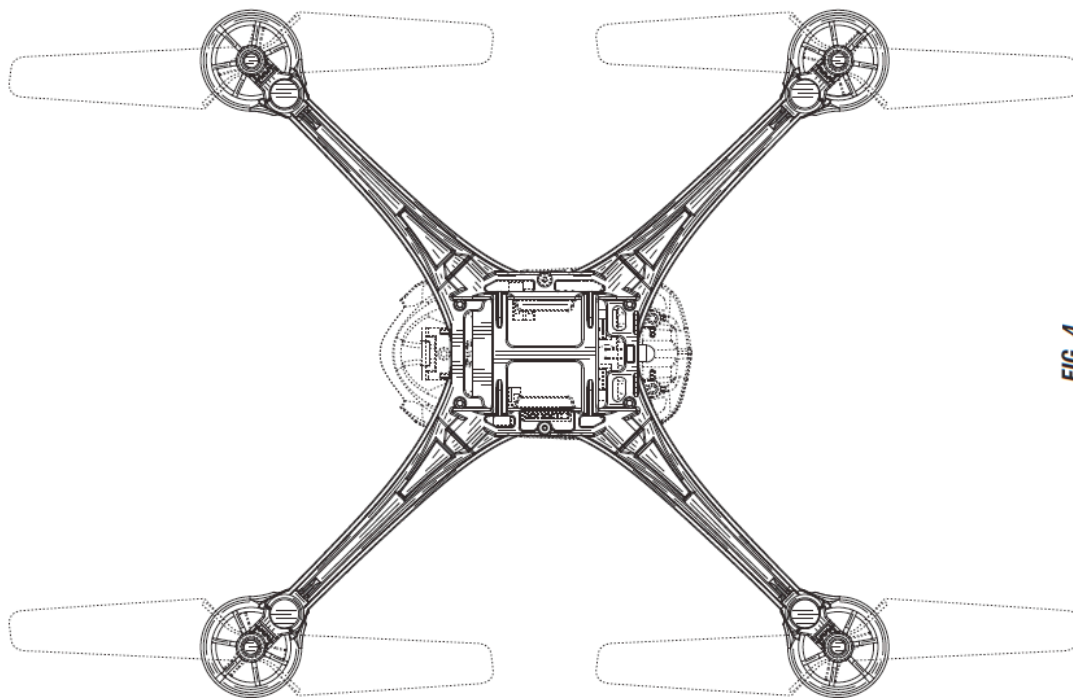


FIG. 4

Fig. 5 - Front Elevational View; Fig. 6 Right Side Elevational View

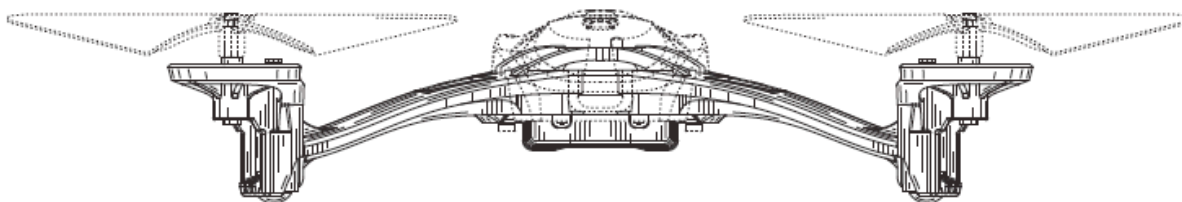


FIG. 5

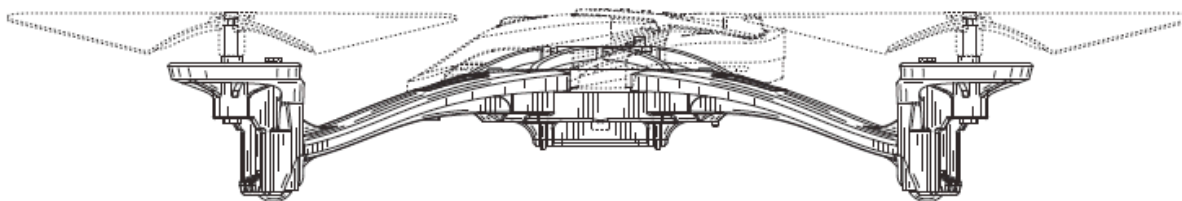


FIG. 6

Fig. 7 - Left Side Elevational View; Fig. 8 - Rear Elevational View

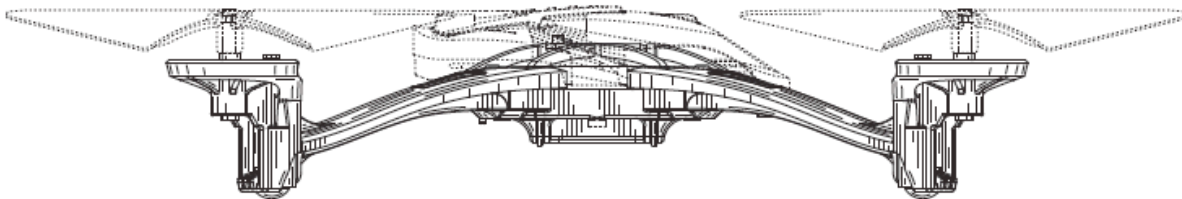


FIG. 7

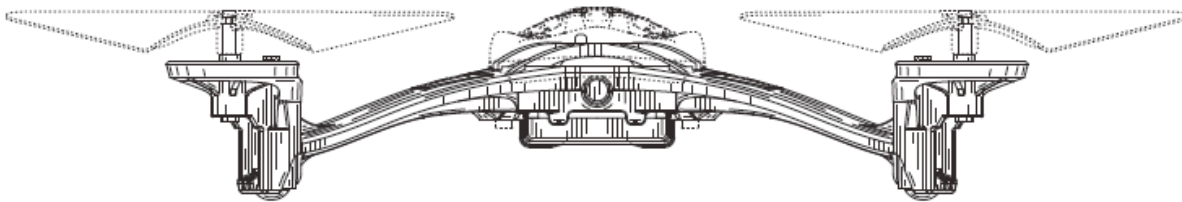


FIG. 8

10. Examples of prior art references that have some general common design features with the '453 patented design are as follows:

US-D691,514S	 <p data-bbox="889 1199 959 1230">FIG. 5</p>
HUBSAN X4	

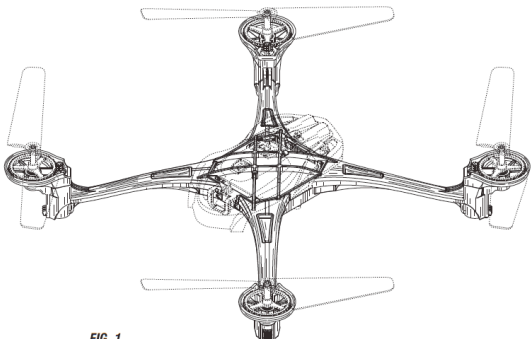

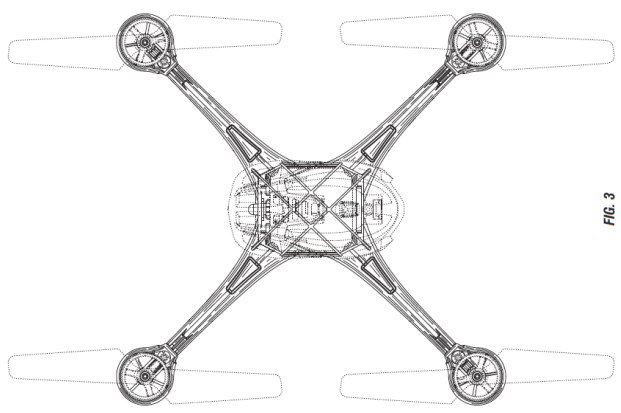

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NANO QX



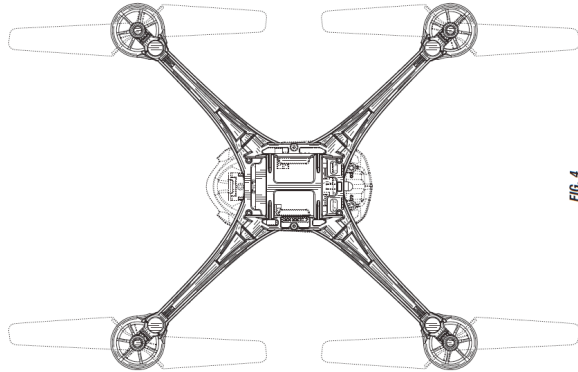
BLADE MQX



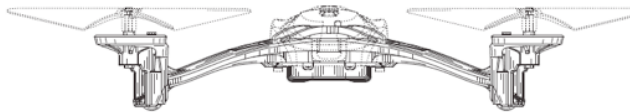
11. Although Plaintiff contends the ordinary observer test is not conducted in a side-by-side comparison, for convenience the following is a comparative visual analysis of the patented Quadrotor Model Helicopter Airframe design and the WL Toys V636 accused product:

Traxxas '453 Patented Design	WL Toys V636 Accused Product
Perspective View	
 <p>FIG. 1</p>	
Top Plan View	
 <p>FIG. 3</p>	

Bottom Plan View



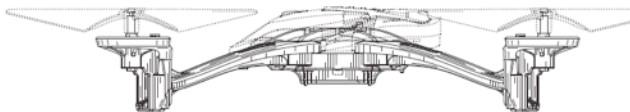
Front Elevational View



Rear Elevational View

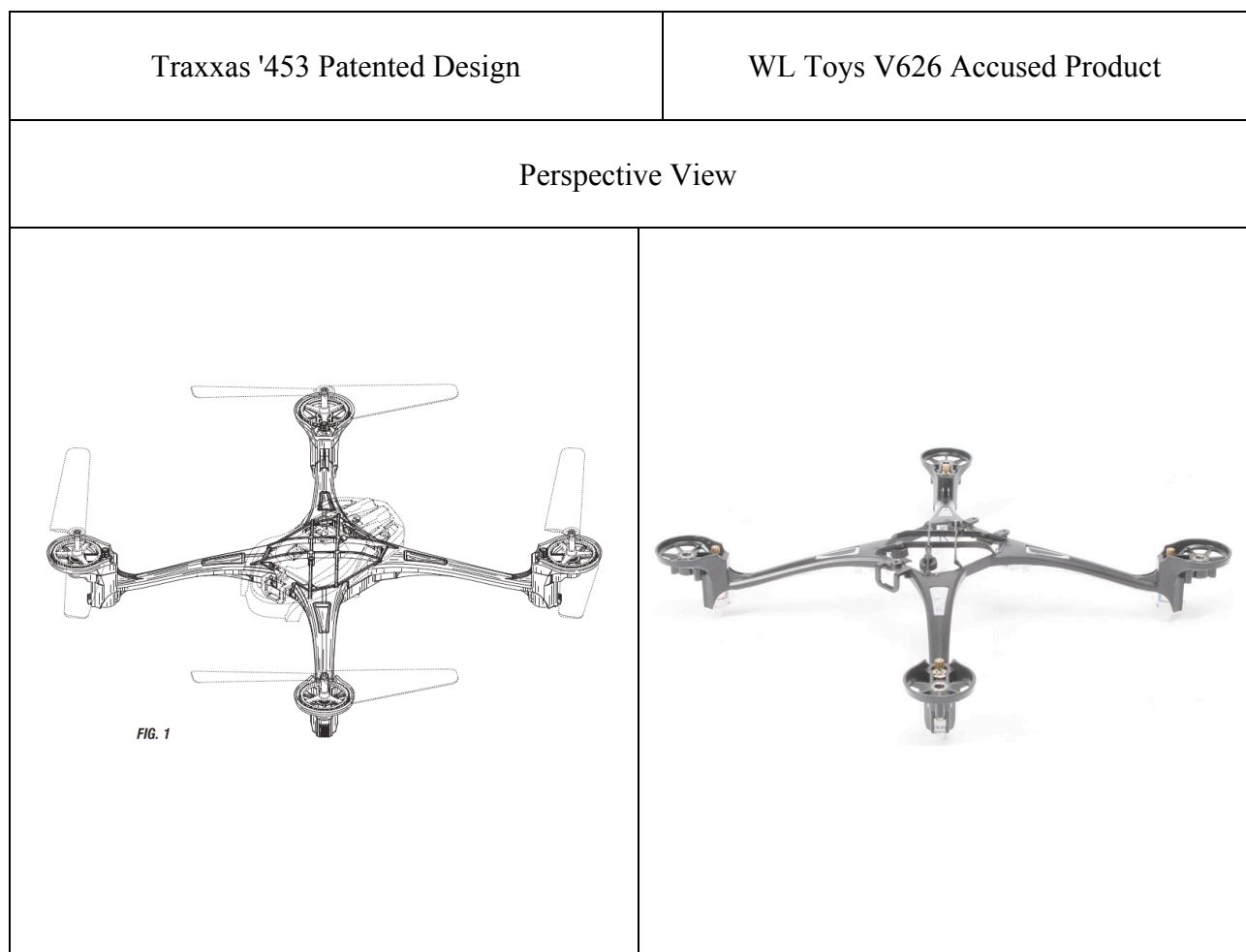


Right Side Elevational View

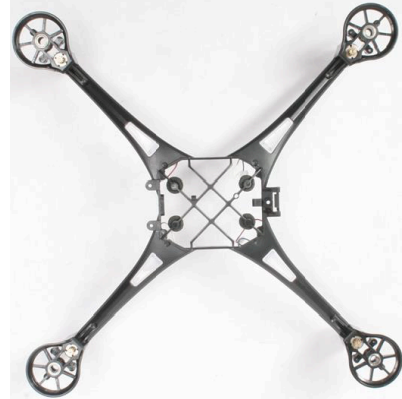
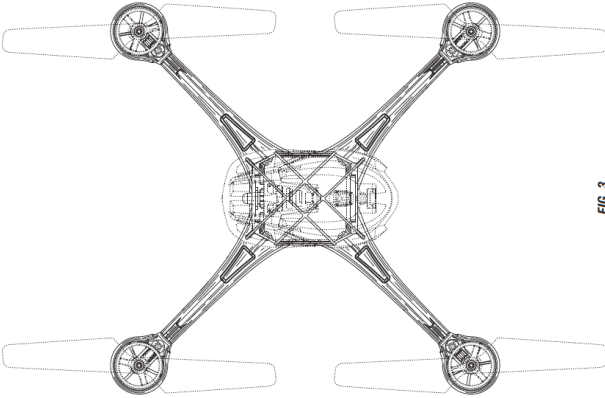




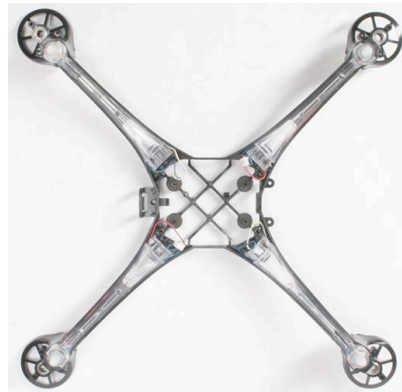
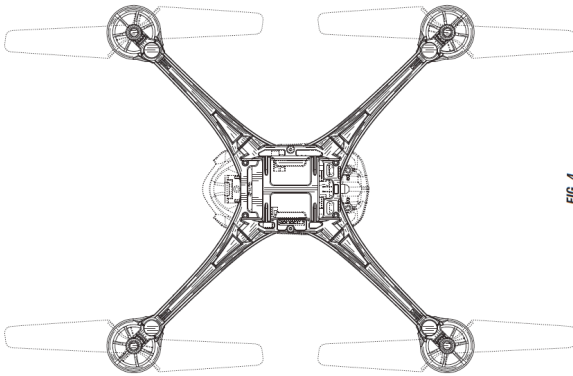
12. Although Plaintiff contends the ordinary observer test is not conducted in a side-by-side comparison, for convenience the following is a comparative visual analysis of the patented Quadrotor Model Helicopter Airframe design and the WL Toys V626 accused product:



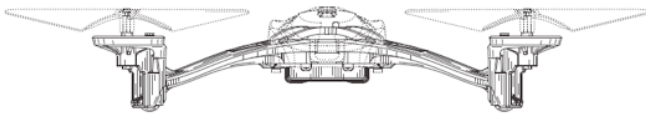
Top Plan View

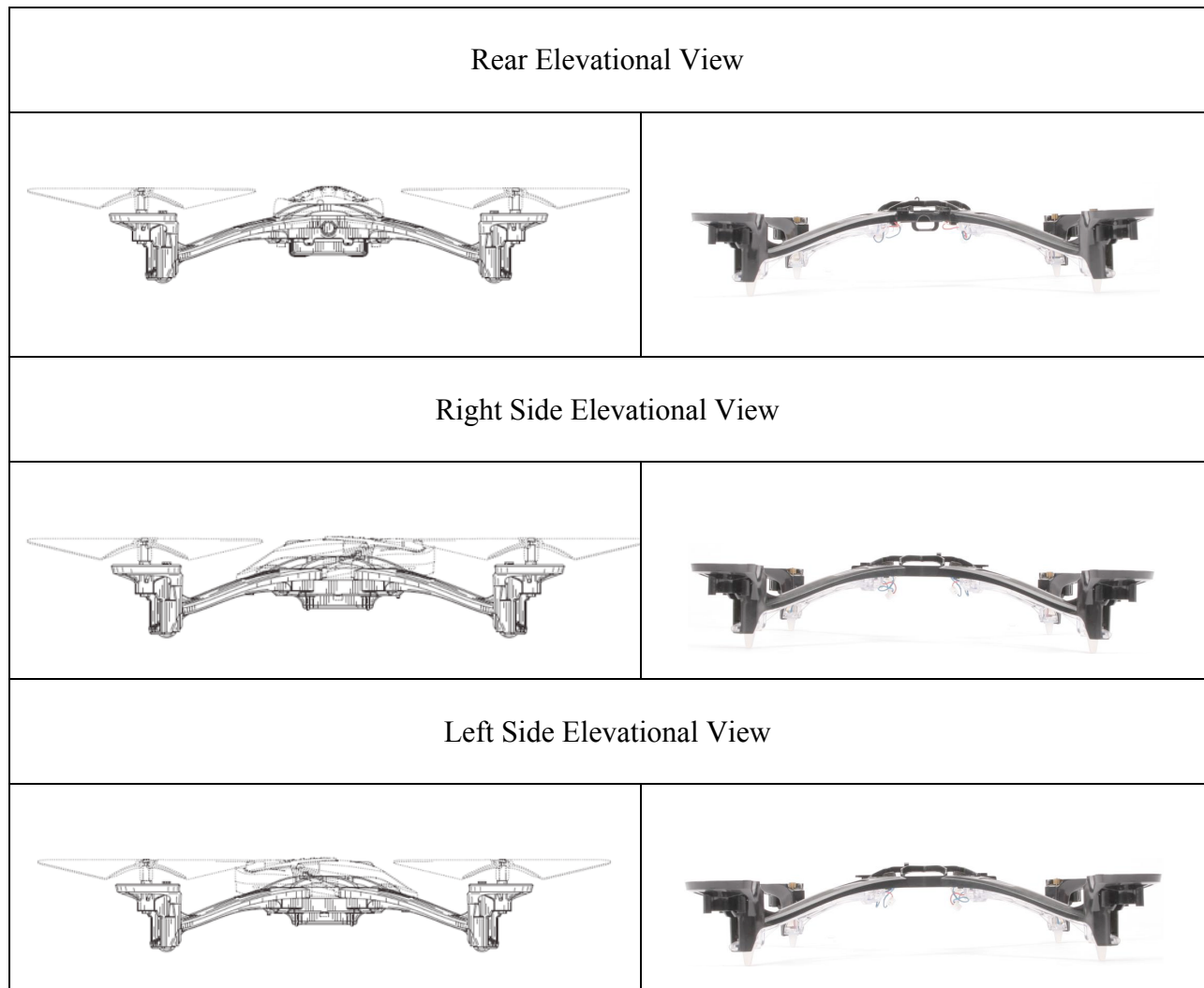


Bottom Plan View



Front Elevational View





IV. PATENT INFRINGEMENT UNDER 35 U.S.C. § 271, ET SEQ.

13. Plaintiff reasserts the allegations of paragraphs 1 through 12 and incorporates the same herein by reference.

14. Defendant WL Toys has offered to sell and/or sold in this Judicial District, and offered to sell and/or sold in the United States, one or more Quadrotor Model Helicopter Airframe products as pictured above that fall within the scope of the claim of U.S. Design Patent No. D710,453, all in violation of 35 U.S.C. § 271, et seq.

15. The patented and accused designs depart conspicuously from the prior art in similar ways.

16. A finding of infringement is appropriate in this case because, without limitation, the accused designs have copied particular features of the claimed design that depart conspicuously from the prior art.

17. The accused designs infringe the '453 patented design under the ordinary observer test.

18. On information and belief, the acts of infringement by WL Toys described above have been and continue to be intentional and willful.

19. Plaintiff Traxxas is entitled to damages as a result of Defendant WL Toys' infringement, as provided by law.

20. On information and belief, Defendant WL Toys has caused irreparable damage to Traxxas by its acts of infringement as described above and will continue said acts of infringement unless permanently enjoined by this Court.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against the Defendant for the following relief:

- A. That U.S. Design Patent No. D710,453 is valid and enforceable;
- B. That Defendant has infringed U.S. Design Patent No. D710,453 and that such infringement was willful;
- C. An award of damages to Traxxas against Defendant WL Toys for infringement of U.S. Design Patent No. D710,453 under 35 U.S.C. § 284 or § 289;
- D. In the event Traxxas elects to recover damages under 35 U.S.C. § 284, an increase of the sums awarded to Traxxas to three times the actual damages, pursuant to 35 U.S.C. § 284;

E. That WL Toys be permanently enjoined from infringing U.S. Design Patent No. D710,453;

F. That this case be deemed as exceptional under 35 U.S.C. § 285 due to the intentional and willful nature of Defendant's infringement, and an award to Plaintiff Traxxas of attorney fees under 35 U.S.C. § 285;

G. An award of prejudgment and post judgment interest and costs of suit to Plaintiff Traxxas; and

H. An Order granting Plaintiff Traxxas such other and further relief as deemed just and equitable.

VI. DEMAND FOR JURY TRIAL

Plaintiff Traxxas, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, demands a trial by jury on all issues triable by right by a jury.

Respectfully submitted,

/s/Robert G. Oake, Jr.

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Attorney for Plaintiff Traxxas, LP